

Nos. 2016-1424, 2016-1435, 2016-1474, 2016-1482

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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PENOBSCOT NATION; UNITED STATES, on its own behalf,  
and for the benefit of the Penobscot Nation,

*Plaintiffs-Appellants/Cross-Appellees,*

v.

AARON M. FREY, Attorney General for the State of Maine; JUDY A. CAMUSO,  
Commissioner for the Maine Department of Inland Fisheries and Wildlife; JOEL T.  
WILKINSON, Colonel for the Maine Warden Service; STATE OF MAINE;  
TOWN OF HOWLAND; TRUE TEXTILES, INC.; GUILFORD-SANGERVILLE  
SANITARY DISTRICT; CITY OF BREWER; TOWN OF MILLINOCKET;  
KRUGER ENERGY (USA) INC.; VEAZIE SEWER DISTRICT; TOWN OF  
MATTAWAMKEAG; COVANTA MAINE LLC; LINCOLN SANITARY  
DISTRICT; TOWN OF EAST MILLINOCKET; TOWN OF LINCOLN; VERSO  
PAPER CORPORATION,

*Defendants-Appellees/Cross-Appellants,*

EXPERA OLD TOWN; TOWN OF BUCKSPORT; LINCOLN PAPER AND  
TISSUE LLC; GREAT NORTHERN PAPER COMPANY LLC,

*Defendants-Appellees.*

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TOWN OF ORONO,

*Defendant.*

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Appeal from the United States District Court for the District of Maine

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**REPLY BRIEF OF PETITIONER PENOBSCOT NATION**

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\* The Maine Indian Claims Settlement Act of 1980 (“MISCA”) was formerly codified at 25 U.S.C. §§ 1721-1735 but was removed from the United States Code as of 25 U.S.C. Supp. IV (Sept. 2016) by codifiers to improve the Code’s organization. Like the Nation’s petition for rehearing en banc, this reply refers to MICSA’s sections as previously codified.

## INTRODUCTION

The panel decision shrinks the borders of the Penobscot Nation, tramples on the Nation’s sovereign authority to govern its affairs on the Penobscot River, and threatens the Nation’s culture and way of life. It is hard to imagine circumstances more deserving of en banc review. Review is all the more paramount in light of the divided panel’s departure from time-honored principles that has troubling repercussions for Indian tribes throughout this Circuit. The panel concluded that the Penobscot Reservation excludes the waters and submerged lands of the River on the ground that the Settlement Acts define the Reservation as consisting of “islands”—even though the Acts simultaneously recognize the Nation’s right to fish “within the boundaries of [its] \*\*\* Reservation,” *i.e.*, in the River. As Judge Torruella explained in dissent, the panel’s “dictionary-driven” reading turns a blind eye to the broader statutory context, disregards established canons of construction in federal Indian law cases, and contravenes governing precedent from the Supreme Court and this Court.

The State’s efforts to defend that faulty logic are unpersuasive. Rather than grapple with the statutory text *as a whole*, the State parrots the panel majority’s cramped construction of the purportedly “unambiguous” Settlement Acts and struggles (without success) to harmonize the decision with governing Supreme Court and First Circuit precedent. Then, to add insult to injury, the State asserts that the Indian canons of construction “do not apply against the State of Maine” at all (Resp.

8)—a position so extreme and out of step with precedent that not even the panel majority invoked it.

The only thing the State gets right is its concession that Maine’s new legislation—“An Act to Protect Sustenance Fishing”—has no effect on this case. Although the new law recognizes the *practice* of sustenance fishing in the River “by members of the Indian tribes in Maine or other Maine citizens” (Resp. 15), Maine continues to deny that the Nation has any *right* to engage in that practice. Nothing in that new law undermines the need for en banc review or otherwise diminishes the exceptional importance of the issues presented. This Court should grant the petitions to conform the panel decision to controlling Supreme Court and Circuit precedent, and undo the majority’s incursion on the Nation’s sovereign borders.

## **ARGUMENT**

### **THE STATE’S RESPONSE SUFFERS FROM THE SAME FLAWS AS THE PANEL DECISION AND ONLY UNDERSCORES THE EXCEPTIONAL IMPORTANCE OF THIS CASE**

#### **A. The State Misunderstands Bedrock Principles Of Statutory Interpretation, Particularly With Respect To Indian Law Cases**

1. The State regurgitates the panel majority’s “dictionary-driven” focus on a single provision of the Settlement Acts, to the exclusion of compelling countervailing textual and historical evidence. The State insists that this case begins and ends with the “unambiguous” language of section 6203(8): the Reservation “means the islands in the Penobscot River reserved to the Penobscot Nation \*\*\*

consisting solely of Indian Island \*\*\* and all islands in that river northward thereof that existed on June 29, 1818.” 30 M.R.S.A. § 6203(8). Because the “ordinary meaning” of the word “island” is “land that is completely surrounded by water,” the State says, the Reservation *must* exclude the waters of the River. Resp. 4.

That constricted interpretation flouts numerous principles of statutory construction. For one, it disobeys the Supreme Court’s directive not to construe a statutory provision based “solely on dictionary definitions of its component words.” *Yates v. United States*, 135 S. Ct. 1074, 1081 (2013) (plurality opinion). For another, it violates the related tenet that courts must “interpret the relevant words [of a statute] not in a vacuum, but with reference to the statutory context, structure, history, and purpose.” *Abramski v. United States*, 573 U.S. 169, 179 (2014) (internal quotation marks omitted); see *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019) (plurality opinion) (“[S]tatutory interpretation [i]s a ‘holistic endeavor’ which determines meaning by looking not to isolated words, but to text in context, along with purpose and history.”).

Here, the statutory context provides powerful evidence that the Reservation should be construed to include the waters and beds of the River. Specifically, section 6207(4) expressly preserves the Nation’s right to “take fish, within the boundaries of [its] Indian reservation[.]” 30 M.R.S.A. § 6207(4). As Judge Torruella observed, the Nation’s right to “fish ‘within’ the[] Reservation implies that there is a place to

do so,” Pet.Add. 61, and the only place the Nation can exercise that right is in the waters of the River.

The State counters this commonsense understanding of the Settlement Acts with the unexplained (and circular) assertion that section 6207(4) “cannot dramatically alter the plain meaning of section 6203(8)” because “[l]egislatures do not hide elephants in mouseholes.” Resp. 6-7 (quoting *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 468 (2001)). But section 6207(4) is no elephant in a mousehole; it is an integral part of the statutory regime that informs the plain meaning of neighboring provisions, including section 6203(8). Indeed, it is a foundational precept of statutory construction that “[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole”—a principle the panel majority (and the State’s response here) fails to heed. *Yates*, 135 S. Ct. at 1081-1082 (alterations in original).

Equally unavailing is the State’s half-hearted invocation of a handful of (more ancillary) provisions of the Settlement Acts. Resp. 5-6. The point remains that section 6207(4), at a minimum, injects ambiguity into the scope of the Reservation with respect to the River. And, as discussed next, any ambiguity requires resort to

tools of statutory construction—or, more aptly here, Indian treaty construction—that compel adoption of the Nation’s (and federal government’s) interpretation.<sup>1</sup>

2. The panel’s method of statutory construction would be wrong in any case, but it is particularly indefensible in a case involving federal Indian law. The Settlement Acts at issue ratified the Nation’s agreement with Maine and Massachusetts. For over a century, the Supreme Court has held—as reaffirmed just this past Term—that such agreements “must be interpreted in light of the parties’ intentions, with any ambiguities resolved in favor of the Indians, and the words of [such agreements] must be construed in the sense in which they would naturally be understood by the Indians.” *Herrerra v. Wyoming*, 139 S. Ct. 1686, 1699 (2019) (citation and internal quotation marks omitted). Contravening that command, the panel majority here considered neither the historical context of the Settlement Acts nor how the Nation would have understood the pertinent statutory provisions.

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<sup>1</sup> In any event, the State’s reliance on those other provisions of the Settlement Acts is misplaced. The State urges, for example, that section 6205(3)(A)—providing that “land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation,” 30 M.R.S.A. § 6205(3)(A)—would be rendered superfluous if the Reservation included the waters of the River. Resp. 6. But the Settlement Acts define the Reservation as including the “Indian Island” and “all islands in that river northward thereof.” 30 M.R.S.A. § 6203(8). As Judge Torruella explained, “the Penobscot River also runs for approximately 30 miles *south* of the Main Stem.” Pet.Add. 53 n.28. So section 6205(3)(A) “serves the purpose of rendering land along and adjacent to *any* part of the Penobscot River (including south of the Reservation) contiguous to the Reservation.” *Id.* Interpreting the Reservation to include River waters thus yields no superfluity at all.

But the dissent did. After canvassing the historical record for evidence of the Nation’s understanding, Judge Torruella rightly recognized the critical role of fishing in the River’s waters to both the sustenance and culture of the Nation, as well as the manifest and acknowledged importance to the Nation of preserving those long-held waters as part-and-parcel of its island Reservation. Pet.Add. 36-43, 47-49. Those undeniable facts comport with the Nation’s “retained” aboriginal title in the River. Pet.Add. 51-60; *see Maine v. Johnson*, 498 F.3d 37, 47 (1st Cir. 2007).<sup>2</sup>

The State raises two arguments in defense of the panel majority’s willful disregard of the Nation’s contemporaneous understanding of the Reservation’s scope. First, the State contends (in passing) that the “Indian canons” do not apply here because the Settlement Acts admit of no ambiguity. Resp. 7-8. That is wrong for the reasons articulated *supra*, pp. 2-5. In particular, section 6207(4)’s preservation of the Nation’s fishing rights “within the boundaries of [its] \*\*\* Reservation” is fatal to the State’s attempt to evade the Indian canons. At bottom, the State has failed to show that the Settlement Acts exclude the River’s waters from the Reservation—much less unambiguously so.

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<sup>2</sup> For that reason, the State’s feeble attempt (Resp. 8-9 n.5) to avoid the clear-statement rule for diminishing the Nation’s borders fails regardless of the timing of federal recognition. *See Oneida Cty. v. Oneida Indian Nation*, 470 U.S. 226, 247-248 (1985) (requiring Congress’s “plain and unambiguous” statement to extinguish aboriginal title); U.S. Pet. 16-17.

Second, in a stunning rebuke of Supreme Court precedent and the Nation’s sovereignty, the State argues that the Indian canons can *never* be invoked against Maine. The State urges that certain provisions of the Settlement Acts—25 U.S.C. §§ 1725(h) and 1735(b)—bar the application of any federal law (including the Indian canons) that accords special status to Indians and that affects/preempts Maine’s jurisdiction. Resp. 8-9. Not even the panel decision adopted that extraordinary assertion. With good reason. For starters, section 1735(b), by its terms, addresses only federal laws “enacted after October 10, 1980.” 25 U.S.C. § 1735(b). The Indian canons predate 1980 and were not “enacted.” *See Antoine v. Washington*, 420 U.S. 194, 199 (1975) (recognizing that Indian “canon[s] of construction [have been] applied over a century and a half by” the Supreme Court). Nor does anything in section 1725(h)<sup>3</sup> support the proposition that, in passing the Settlement Acts, Congress sought to prohibit courts from applying the Indian canons in suits involving the jurisdiction of Maine (and only Maine). In fact, this Court has foreclosed any suggestion that the Settlement Acts disavow the Indian canons. *See Penobscot Nation v. Feller*, 164 F.3d 706, 709 (1st Cir. 1999) (acknowledging that the Indian canons are “general principles that inform [the Circuit’s] analysis of

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<sup>3</sup> Section 1725(h) provides that generally applicable Indian law applies in Maine, except federal laws that (1) “accord[] or relate[] to a special status \*\*\* of \*\*\* Indian reservations” and (2) “affect[] or preempt[] the civil, criminal, or regulatory jurisdiction of the State.” 25 U.S.C. § 1725(h).

the statutory language” of the Settlement Acts); *Akins v. Penobscot Nation*, 130 F.3d 482, 489-490 (1st Cir. 1997) (Congress “explicitly made existing general federal Indian law applicable to the Penobscot Nation in the Settlement Act” to inform the Act’s construction).

The State’s overreach is revealing: the State does not and cannot make any argument that it should prevail under a faithful application of the Indian canons of construction. That silence speaks volumes.

**B. The State Fails To Harmonize The Panel Decision With *Alaska Pacific Fisheries* and *Maine v. Johnson***

1. The Supreme Court’s decision in *Alaska Pacific Fisheries Co. v. United States*, 248 U.S. 78 (1918), cannot be reconciled with the panel decision. *See* Penobscot Pet. 12-15; Pet.Add. 47-48 (Torruella, J., dissenting). In *Alaska Pacific Fisheries*, the Supreme Court held that the reservation-defining statutory language “the body of lands known as Annette Islands” encompassed not just the islands, but the surrounding waters too. 248 U.S. at 89. That interpretation, the Court reasoned, flowed from the fact that the “Indians could not sustain themselves from the use of the upland alone” and thus “naturally looked on the fishing grounds as part of the islands.” *Id.*

The Court’s reasoning compels the conclusion that the Penobscot Reservation includes the waters of the River. Here, just as in *Alaska Pacific Fisheries*, the Nation’s members “have fished in the [River] since time immemorial, and \*\*\*

fishing [was for them] not only a key means of sustenance, but also an inextricable part of their culture.” Pet.Add. 47-48. Here, just as in *Alaska Pacific Fisheries*, the waters of the River give “to the islands a value for settlement and inhabitation which otherwise they would not have.” Pet.Add. 47. And here, just as in *Alaska Pacific Fisheries*, “[t]he [Nation] naturally look[s] on the fishing grounds as part of the islands.” Pet.Add. 48 (first alteration in original).

The State flails against this wave of “profound” parallels (Pet.Add. 43). It argues primarily that the language at issue in *Alaska Pacific Fisheries* “differs substantially” from section 6203(8). Resp. 10. Not so. Section 6203(8) defines the Reservation to include “islands in the Penobscot River \*\*\* consisting solely of Indian Island \*\*\* and all islands in that river northward thereof that existed on June 29, 1818.” 30 M.R.S.A. § 6203(8). The *Alaska Pacific Fisheries* statute defined the reservation as a “body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska.” 248 U.S. at 86-87. The similarities between the two statutory provisions jump off the page: one refers to “lands,” the other to “islands”; both specify *which* islands are included; and both specify *where* those islands are located. Pet.Add. 45. Without elaboration, the State asserts that the Settlement Acts’ “technical definition [of Reservation] leaves no room for surrounding waters.” Resp. 11. But the statutory language in *Alaska Pacific*

*Fisheries* is no less technical than section 6203(8). If the former leaves enough room for surrounding waters, so must the latter.

In a last-ditch effort to sidestep *Alaska Pacific Fisheries*, the State suggests that the historical circumstances giving rise to that case are wholly “distinct” from those in this one. Resp. 11-12. That too is wrong. The State argues that the Supreme Court in *Alaska Pacific Fisheries* adopted a more flexible and permissive reading of the statutory text “to preserve a fishery that could serve as the [tribe’s] economic base” or “would have been capable of sustaining the [tribe].” Resp. 12. But fishing in the River is the lifeblood of the Nation, whose members “have fished in the Main Stem since time immemorial” and rely on fishing in the River to survive. Pet.Add. 47-48 (quoting *Alaska Pac. Fisheries*, 248 U.S. at 89); see Resp.Add. 11-12 (Letter from Penobscot Chief Kirk Francis stating that fishing in River “has forever been a traditional cultural practice” that is “essential to its cultural survival and the survival of its members”); Penobscot Principal Br. 4-9, 21-22, 36-38 (discussing Nation’s historical reliance on sustenance fishing in River); see also S. REP. NO. 96-957, at 14-17 (1980); H.R. REP. NO. 96-1353, at 14-17 (1980) (expressing Congress’s intent in Settlement Acts to protect Nation’s sustenance fishing practices from interference by Maine). Here, no less than in *Alaska Pacific Fisheries*, “[t]he use of the adjacent fishing grounds” in the River is “essential” to sustaining the Nation because “[w]ithout this the [Nation] could not prosper.” 248 U.S. at 89.

2. The panel’s decision also contradicts this Court’s reasoning in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007). In *Johnson*, this Court held that the State could exercise Clean Water Act authority in the Penobscot territory and, in so holding, readily accepted the proposition (dispositive here) that Penobscot’s “lands” included “waters.” *Id.* at 47. The State asserts that *Johnson* never decided the scope of the Reservation because the Court there “assume[d] (without deciding) that each of the disputed discharge points lies within the tribes’ territories.” Resp. 13 (quoting *Johnson*, 498 F.3d at 40. n.3). But that ignores *Johnson*’s broader context.

As Judge Torruella flagged (and as the State nowhere disputes), the Nation’s standing in *Johnson* hinged on the fact that Reservation “include[d] at least some part of the Penobscot River.” Pet.Add. 58 n.33. Because this Court “decided the Nation’s claims in *Johnson* on the merits,” it necessarily follows “that the Nation had standing” and “that the Reservation included some part of the River.” *Id.* Beyond that, the central merits question in *Johnson* was whether certain discharges were made into territory “acquired by the Secretary [of the Interior] in trust” for the Nation, or rather into the Reservation. Pet.Add. 58. The Court answered that the discharges were made into “reservation waters *retained by* the” Nation under the Settlement Acts. *Johnson*, 498 F.3d at 47. Accordingly, even though this Court admittedly bypassed any decision of the Reservation’s precise boundaries, *Johnson* held in no uncertain terms that the Reservation “included some part of the Penobscot

River”—a holding that is directly at odds with the panel’s categorical conclusion that the Reservation “includes no part of the River.” Pet.Add. 59.

**C. Maine’s Recent Legislation Does Not Affect This Case Or Otherwise Diminish Its Exceptional Importance**

The Nation agrees with the State that the recently enacted Maine legislation referenced in this Court’s June 25, 2019 Order “does not affect the issues in this case, the *en banc* petitions, or the correctness of the panel decision.” Resp. 14. But the Nation vigorously disputes the State’s further assertion that the Act somehow “underscores that the Nation’s sustenance fishing rights are not threatened by the State.” *Id.* This legislation in no way minimizes the exceptional importance of this case or otherwise obviates the need for further review.

The new Maine law, in pertinent part, provides for the adoption of more stringent water-quality standards for portions of the River. *See* ME. PUB. L. NO. 2019, ch. 463 (Resp.Add. 60-68). As the State notes (Resp. 13-14), that law—designed to address a separate dispute over regulation of the River’s water quality—does *not* speak to the meaning of the Settlement Acts or otherwise disturb the panel’s conclusion in this case that the River falls outside the Penobscot Reservation. Resp.Add. 59 (“No part of this bill as amended is intended to relate to or affect in any way any claims or disputes regarding any definition of Indian \*\*\* reservations \*\*\* under any other provision of state or federal law.”); *see* ME. PUB. L. NO. 2019, ch. 463, § 5, cl.3 (Resp.Add. 62).

Nor does the new law secure the Nation’s right to fish in the River. Rather, implicit in the State’s position is the misguided belief—ratified by the panel decision—that sovereign authority over the waters of the River now rests exclusively in the hands of Maine, not the Nation. Regardless of whether the new law “will have a positive impact on the Main Stem and protect Maine citizens who engage in sustenance fishing on the Penobscot River,” Resp. 16-17, the Settlement Acts promised the Nation an on-reservation sustenance fishing right distinct from the fishing rights of other Maine citizens. The panel’s decision leaves no location where that right could be exercised. *See* State’s Mot. for J. on Admin. R. 48 & n.55, *Maine v. Wheeler*, No. 14-cv-264 (D. Me. Feb. 16, 2018), ECF No. 118 (invoking panel’s decision to claim that any guarantee of fishing rights under the Settlement Acts “would not extend beyond reservation boundaries per the express limitation in § 6207(4)”). That the State is willing, as a matter of administrative grace, to stay its hand and permit Penobscot members to fish in the River *for now* in no way forecloses the State from imposing *future* limitations on the Nation’s sustenance fishing rights. The only way to safeguard those rights is to restore the River to the Reservation. The State’s view thus only heightens the need for en banc resolution.<sup>4</sup>

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<sup>4</sup> Relatedly, the State’s position highlights a perverse irony in the panel’s decision: The panel majority found that any dispute over the Nation’s sustenance fishing rights in the River was not ripe, yet it proceeded to adjudicate Maine’s counterclaim to exclude the River from the Reservation. Pet.Add. 4-5. How the

Beyond sustenance fishing, the new legislation does nothing to ameliorate the other severe harms that the panel decision occasions on the Nation's sovereignty. Left undisturbed, the panel decision casts a dark cloud upon the Nation's regulatory authority, livelihood, and cultural identity.

Most immediately, the panel decision calls into serious doubt the Nation's longstanding authority to regulate affairs in and on the River. For decades, the Nation's Game Warden Service has worked tirelessly to enforce the Nation's tribal laws regulating the hunting, trapping, and other taking of wildlife on the Main Stem. JA738-739, 816, 946-970, 983-985, 1003, 1039; ECF No. 119 ¶ 179 (referencing permits issued to non-tribal members). And the Nation's tribal court, in turn, has prosecuted tribal members for violating those laws on the River. JA1039; *see Penobscott v. Coffman*, No. 7-31-03-cv-04, at 4 (Penobscot Tribal Ct. Mar. 2, 2005) (concluding that private parties' collection of sunken logs constituted "an unlawful

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latter issue could be ripe if the former were not is mystifying. The State has never substantiated a current controversy to ground its sweeping request for a declaratory judgment to confine the Nation's historic Reservation boundaries to island surfaces, and the panel ignored the Nation's clear objection on that basis. *See Penobscot Principal Br.* 34 n.13; *Penobscot Resp./Reply Br.* 35-36 & n.11. If the scope of the Nation's sustenance fishing right were not ripe, then the majority erred in adjudicating the scope of the Reservation in the abstract. Accordingly, at a minimum, this Court should vacate the redrawing of the Nation's borders as premature—particularly in light of the State's newfound commitment to a “trajectory of collaboration between the State and the Maine Tribes on issues of tribal significance,” *Resp.* 2.

taking of tribal resources and constitutes trespass to tribal land”), ECF No. 105-47, at PageID# 3295. The federal government—which, with the Solicitor General’s authorization, continues to press for en banc review given the far-reaching consequences of the panel’s decision—has long supported the Nation’s exercise of tribal sovereignty over conduct occurring in or on the River. JA273-281, 740-760, 785, 854, 881-884, 901-903. The panel decision threatens the Nation’s continuing ability to govern its internal affairs on its namesake River.

The panel decision, moreover, jeopardizes the Nation’s livelihood and cultural identity. The Nation is a “riverine” Indian tribe, whose members refer to themselves as Pa’nawampske’wiak, or “People of where the river broadens out.” JA1153. Consonant with that moniker, the Nation and its members depend on the fish, eel, turtle, waterfowl, muskrat, and beaver in the River for sustenance. JA993-994, 1002, 1046. The River and its waters are embedded in the Nation’s cultural traditions, language, and belief system. *See Penobscot Principal Br. 4-5*; JA1178. In short, the River is the heart and soul of the Nation’s aboriginal territory, and the panel’s startling conclusion that the River is not part of the Reservation flies in the face of that age-old understanding.

Finally, it bears emphasis that the ramifications of the panel decision ripple far beyond this case. As explained by amici National Congress of American Indians and the United South & Eastern Tribes, the panel decision—including its refusal to

apply the Indian canons of construction—threatens to upend “[l]iterally hundreds of treaties, statutes, and executive orders” that (like the Settlement Acts) “identify lands constituting Indian reservations.” NCAI Amicus Br. 9-10.

### CONCLUSION

This Court should grant the en banc petitions to restore to the Penobscot Nation its rightful Reservation and bring the panel’s decision in line with established precedent.

Dated: July 25, 2019

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I certify that: (i) this reply complies with the type-volume limitation prescribed by this Court's June 25, 2019 Order because it contains 3,857 words, excluding the parts of the petition exempted by Federal Rule of Appellate Procedure 32(f); and (ii) this reply complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this reply has been prepared using Microsoft Word in 14-point Times New Roman.

/s/Pratik A. Shah

Pratik A. Shah

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of July, 2019, I electronically filed the foregoing with the Clerk of the Court using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: July 25, 2019

/s/Pratik A. Shah

Pratik A. Shah